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and STEPHEN S. TUNG

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

VIRGINIA PELLEGRINI, Trustee of the
Mario J. and Virginia E. Pellegrini Trust,
and VIRGINIA PELLEGRINI, an
individual

Plaintiff,

v.

TECHNICHEM, INC., a California
corporation; MARK J. NG, an individual;
and STEPHEN S. TUNG, an individual,

Defendants.

Case No. 07-CV-02497-CRB

**NOTICE OF *EX PARTE*
APPLICATION TO CONTINUE
CASE MANAGEMENT
CONFERENCE;
MEMORANDUM OF POINTS
AND AUTHORITIES;
DECLARATION OF BRIAN M.
LEDGER; ~~PROPOSED~~ ORDER**

Date: October 5, 2007
Time: 1:30 pm
Courtroom: 8, 19th floor
Judge: Charles R. Breyer

Complaint Filed: May 9, 2007

PLEASE TAKE NOTICE that Defendants TECHNICHEM, INC., MARK J. NG, and STEPHEN S. TUNG (collectively "Defendants") submit the following *Ex Parte* Application to Continue Case Management Conference to **October 26, 2007 at 8:30 a.m.** Defendants bring this Application pursuant to LR 7-10 and paragraph 4 of the Court's Standing Order. Plaintiffs' counsel opposes this Application. This Application is supported by this Notice, the memorandum of points and authorities reflecting the requisite good cause, and the Declaration of Brian M. Ledger ("Ledger Decl.").

MEMORANDUM OF POINTS AND AUTHORITIES

I. LEGAL AUTHORITY

Paragraph 4 of this Court's Standing Order states:

No changes in the Court's schedule shall be made *except by signed order of the Court and only upon a showing of good cause*. Parties seeking to continue hearings, request special status conferences, modify briefing schedules, or make other procedural changes shall submit a signed stipulation and proposed order, or, if stipulation is not possible, an *ex parte* application in writing.

II. GOOD CAUSE EXISTS TO CONTINUE THE CASE MANAGEMENT CONFERENCE

Good cause exists for this Court to continue the initial Case Management Conference ("CMC") until **8:30 a.m. on October 26, 2007**.

On September 5, 2007, the Court changed the time of the initial CMC from 8:30 a.m. to 1:30 p.m. on October 5, 2007. Brian Ledger, lead trial counsel for Defendants, was planning on attending the CMC; however, he had already purchased an airline ticket for a two-week vacation that was to leave San Francisco, California at 3:10 p.m. for Amsterdam. (Ledger Decl. ¶3) Mr. Ledger investigated the possibility of changing his flight, but the additional fees would have amounted to over \$500. (Ledger Decl. ¶4)

Upon discovering the financial difficulties with rescheduling the flight, Defense counsel engaged in a meet and confer with counsel for plaintiffs on numerous occasions to try to reach a stipulation and avoid burdening the Court with this issue. (Ledger Decl. ¶8) Counsel for plaintiffs indicated that they were not willing to stipulate to continuing the CMC for any longer than one week. Defense counsel informed counsel for plaintiffs that one week was insufficient because Mr. Ledger would not yet have returned from vacation. Unfortunately, counsel for plaintiffs was still not willing to agree to any continuance longer than one week. (Ledger Decl. ¶9)

This is the second instance defense counsel has tried to resolve a minor

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procedural issue informally. In the first instance, plaintiffs' counsel would not agree to one 15-day extension of time to respond to their complex environmental cost recovery complaint, which consists of 39 pages, 20 causes of action, and over 200 paragraphs. In that instance, the Court granted Defendants' *ex parte* application to extend the time to respond to the complaint. (Ledger Decl. ¶10) It is important that lead trial counsel attend the initial CMC because plaintiffs are alleging potentially seven figure dollar damage award and punitive damages. (Ledger Decl. ¶11)

Mr. Ledger has another CMC before Judge Breyer on **October 26, 2007** in the Humboldt Baykeeper matter (Case No. C-06-4188). (Ledger Decl. ¶5) As a matter of judicial efficiency, Defendants request that the Court continue the initial CMC in this case until October 26, 2007.

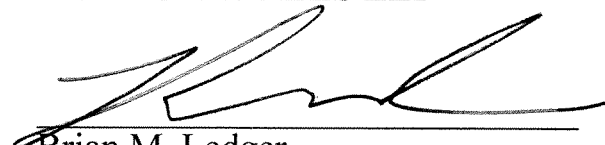
The requested extension of 21 days is not lengthy and will not cause significant delay or undue prejudice to any party. Indeed, this extension does not delay or impact any trial, pre-trial, or discovery dates in the Joint Case Management Conference Statement. (Ledger Decl. ¶6) Further, plaintiffs' counsel has not indicated any conflict with a continuance of the hearing to October 26, 2007. (Ledger Decl. ¶7)

III. CONCLUSION

For the foregoing reasons, good cause exists for the Court to continue the initial CMC from 1:30 p.m. on October 5, 2007 to **8:30 a.m. on October 26, 2007**.

Dated: October 1, 2007

GORDON & REES LLP


 Brian M. Ledger
 Paul A. Henreid
 Attorneys for Defendants TECHNICHEM,
 INC., MARK J. NG, AND STEPHEN S.
 TUNG

DECLARATION OF BRIAN M. LEDGER

I, Brian M. Ledger, declare as follows:

1. I am an attorney at law, duly licensed to practice law in the State of California. I am a partner in the law firm of Gordon & Rees, LLP, and lead trial counsel for defendants TECHNICHEM, INC., MARK J. NG, and STEPHEN S. TUNG (collectively "Defendants"). If called and sworn as a witness, I could competently testify to the matters stated in this declaration as being true and correct, based upon my personal knowledge of such matters.

2. I make this declaration in support of Defendants' *Ex Parte* Application to Continue Case Management Conference ("CMC") to October 26, 2007.

3. As of September 5, 2007, I was planning on attending the CMC on October 5, 2007 at 8:30 a.m. However, I already purchased an airline ticket for a two-week vacation that was to leave San Francisco, California at 3:10 p.m. for Amsterdam.

4. I investigated the possibility of changing the flight, but the additional fees would have amounted to over \$500.

5. I have another CMC before Judge Breyer on **October 26, 2007** in the Humboldt Baykeeper matter (Case No. C-06-4188).

6. The requested extension of 21 days is not lengthy and will not cause significant delay or undue prejudice to any party. Indeed, this extension does not delay or impact any of the trial, pre-trial, or discovery dates in the Joint Case Management Conference Statement.

7. Plaintiffs' counsel has not indicated any conflict with a continuance of the hearing to October 26, 2007.

8. Upon discovering the financial difficulties with rescheduling the flight, my associate Paul Henreid engaged in a meet and confer with counsel for plaintiffs on numerous occasions to try to reach a stipulation and avoid burdening

1 the Court with this issue.

2 9. Counsel for plaintiffs indicated that they were not willing to stipulate
3 to continuing the CMC for any longer than one week. At my direction, Mr.
4 Henreid informed counsel for plaintiffs that one week was insufficient because I
5 would not yet have returned from vacation. Unfortunately, counsel for plaintiffs
6 was still not willing to agree to any continuance longer than one week.

7 10. This is the second instance defense counsel has tried to resolve a
8 minor procedural issue informally. In the first instance, plaintiffs' counsel would
9 not agree to a 15-day extension of time to respond to their complex environmental
10 cost recovery complaint, which consists of 39 pages, 20 causes of action, and over
11 200 paragraphs. In that instance, the Court granted Defendants' *ex parte*
12 application to extend the time to respond to the complaint

13 11. It is important that lead trial counsel attend the initial CMC because
14 plaintiffs are potentially alleging a seven figure dollar damage award and punitive
15 damages.

16
17 I declare under penalty of perjury under the laws of the State of California
18 and the United States of America that the foregoing is true and correct.

19
20 Dated: October 1, 2007

21 
Brian M. Ledger

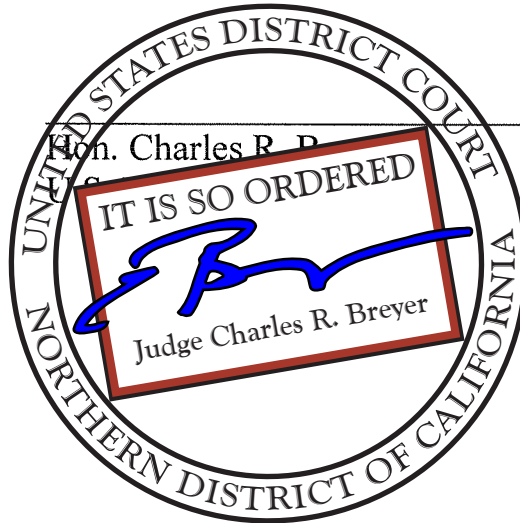
ORDER

Having reviewed Defendants' *Ex Parte* Application to Continue Case Management Conference, and good cause appearing,

IT IS HEREBY ORDERED THAT:

The Case Management Conference is continued to **October 26, 2007** at 8:30 a.m.

DATED: October 3, 2007



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